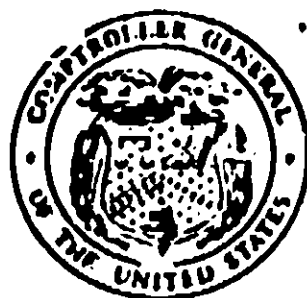


7233

**DECISION**



*A. Gallagher  
Proc I*

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

**FILE:** B-191847

**DATE:** August 4, 1978

**MATTER OF:** St. Louis Ship

**DIGEST:**

1. Where protester's third low bid, even if assumed to be responsive, exceeded price of low nonresponsive bid by 88.1 percent and second low nonresponsive bid by 37.3 percent, cancellation of IFB is supportable based on agency's determination of unreasonably high price.
2. Purpose of IFB requirement for certification in bids that Type II marine sanitation device was capable of being modified to Type III device apparently was to enable agency to evaluate bids to determine characteristics of products being offered--not to determine bidders' ability to perform. Requirement therefore involved bid responsiveness rather than bidder responsibility.

St. Louis Ship (SLS), Division of Pott Industries, Inc., protests the cancellation of invitation for bids (IFB) No. NASO-78-0180 and resolicitation via request for proposals (RFP) No. NASO-78-0224, both issued by the National Oceanic and Atmospheric Administration (NOAA). SLS contends that as the low, responsive, responsible bidder it should have received an award under the IFB.

The IFB, issued to more than 17 prospective bidders, called for a Type II marine sanitation device (MSD) for installation on a NOAA ship. Three bids were received:

Red Fox Industries, Inc. (Red Fox)	\$16,765
Anthony's Industrial and Marine Services (A.I.M.S.)	22,966
SLS	31,550

NOAA determined Red Fox's bid was nonresponsive because its price was on an F.O.B. origin basis rather than F.O.B. destination as required. A.I.M.S.'s bid was nonresponsive for failure to submit any

descriptive literature. In addition, NOAA determined that none of the bids could be responsive because of a defect in the following IFB provisions concerning a required certification:

"Equipment Information:

"Each bidder shall indicate the make and model of the equipment he proposes to supply and furnish complete descriptive literature of the salient characteristics and physical qualities of the equipment. Such descriptive literature must be in sufficient detail to permit an evaluation to be made of the offered equipment. A complete description of bid exceptions must be given and unless otherwise stated in the offer, bidder agrees to modify his designated model as may be necessary to comply with the contract specifications. This includes supplying proof of certification that the proposed system is capable of being modified to a no discharge Type III system. Evidence of certification may include U.S. Coast Guard official approval, Federal or Military Specification Numbers, Quality Product Certification, etc.

\* \* \* \* \*

"Award/Evaluation Basis:

"In accordance with the Federal Procurement Regulations concerning formally advertised procurements, the contract will be awarded to the responsive and responsible bidder who submits the lowest priced offer and certifies capability to deliver a product conforming to all the specifications. In addition to the Requirement for Descriptive Literature (Special Provision #4), failure to provide certification of the capability of modifying the proposed system to a U.S. Coast Guard certified biological no discharge

Type III system shall result in rejection of the bid as nonresponsive." (Emphasis in original.)

NOAA points out that, as the U.S. Coast Guard has confirmed, certification of MSD's pursuant to 33 C.F.R. Part 159 (1977) occurs only after a system has been modified from one type to another. The agency indicates that the IFB therefore was in error in requiring that bids include prior certifications of the capability of Type II systems being modified to Type III's.

NOAA believes that in the circumstances its action in canceling the IFB and resoliciting by an RFP is justified for several reasons: the fact that no bidder could submit a responsive bid under the IFB due to the defective certification provision; doubts that the equipment offered in the bids would meet the agency's actual needs (and, consequently, the need for discussions with offerors concerning their proposed systems); the belief that SLS's bid price was unreasonably high; and various changes in the Government's requirements (a change in the system testing procedures and the fact that under the RFP the agency will consider offers of either Type II or Type III systems).

The principal issue addressed by the protester and the agency concerns the IFB certification requirement, with the protester contending that the IFB was not defective in this respect. SLS maintains essentially that the above-quoted IFB provisions concerning certification relate to bidder responsibility, not bid responsiveness. In the protester's view, the IFB called for each bidder to certify, and furnish substantiating data, that it had the capability to convert its Type II MSD to a Type III. SLS contends it satisfied this requirement by furnishing (along with its bid of a certified Type II system) information about some certified Type III systems it had previously sold to NOAA. The protester also challenges several of NOAA's other justifications for canceling the IFB.

In paragraph 10(b) of the IFB's Solicitation Instructions and Conditions, Standard Form 33-A (Revised July 1977), the Government reserved the right to reject any or all bids. Under Federal Procurement Regulations (FPR) § 1-2.404-2(c) (FPR circ. 1, 2nd. ed., June 1964), any bid may be rejected if the contracting officer determines in writing that it is unreasonable as to price, and FPR § 1-2.404-1(b)(5) (FPR circ. 1, 2nd. ed., June 1964) allows cancellation of an IFB after bid opening if all otherwise acceptable bids are unreasonably priced.

Our Office has consistently recognized that while cancellation of an IFB after bid opening is permissible only for cogent and compelling reasons, a cancellation based on a determination that the only acceptable bid is unreasonably high in price involves the exercise of a broad range of discretion on the part of the contracting officer. See Schottel of America, Inc., B-190546, March 21, 1978, 78-1 CPD 220, and decisions cited therein. As indicated in Schottel, such determinations may be based on a comparison of the bid price with a Government estimate; they may also be based on a comparison with a lower priced nonresponsive bid (49 Comp. Gen. 649, 656 (1970)). See, for example, Colonial Ford Truck Sales, Inc., B-179926, February 19, 1974, 74-1 CPD 80 (bid 13 percent higher than nonresponsive low bid); Ward Leonard Electric Co., Inc., B-186445, July 29, 1976, 76-2 CPD 98 (21.6 percent higher).

In the present case, even assuming for the purposes of argument that SLS's bid was responsive, we note that its \$31,550 price was 88.1 percent higher than the low Red Fox bid and 37.3 percent higher than the second low A.I.M.S. bid. The contracting officer has noted the "extreme difference" in the bid prices and has stated that one reason for the resolicitation is to assure that the system purchased is reasonably priced. In these circumstances we believe NOAA's cancellation of the IFB is supportable on this basis alone.

While the foregoing discussion is sufficient to resolve the protest, we also concur with NOAA's view that the IFB certification requirement related to bid responsiveness rather than bidder responsibility. As indicated in paragraph 2 of the specifications, the IFB contemplated purchase of a Type II system " \* \* \* capable of being modified to a U.S. Coast Guard certified biological no discharge Type III system"; it did not call for the contractor to actually carry out the modification work. Though less than clear, the language of the IFB indicates that the certification was for the purpose of enabling the agency to evaluate bids and determine the characteristics of the systems offered--not to determine the bidders' ability to perform. See Western Waterproofing Company, Inc., B-183155, May 20, 1975, 75-1 CPD 306 (bid nonresponsive for failure to include certified test results necessary to determine precise characteristics of supplies being offered). For a case where a materially different IFB requirement concerning Coast Guard certification of MSD's was held to be a matter of responsibility, see Colt Industries, Water and Waste Management Operation, B-188302, October 3, 1977, 77-2 CPD 252.

The protest is denied.

  
Deputy Comptroller General  
of the United States